

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

DON HAYS, on Behalf of Himself and §  
Others Similarly Situated, §  
§  
*Plaintiff,* §  
§  
V. § CIVIL ACTION NO. SA-23-CA-1490-FB  
§  
FROST & SULLIVAN, INC., §  
§  
*Defendant.* §

**ORDER ACCEPTING REPORT AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

Before the Court are the Report and Recommendation of United States Magistrate Judge (docket no. 24) concerning Defendant Frost & Sullivan, Inc.'s Rule 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction and 12(b)(6) Motion to Dismiss for Failure to State a Claim (docket no. 7), along with Defendant's written objections (docket no. 25) thereto.

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of the Report and Recommendation. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether it is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

On the other hand, any Report and Recommendation to which objection is made requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

The Court has thoroughly analyzed Defendant's submission in light of the entire record. As required by Title 28 U.S.C. § 636(b)(1)(c), the Court has conducted an independent review of the entire record in this cause and has conducted a de novo review with respect to those matters raised by the objections. After due consideration, the Court concludes the objections lack merit.

IT IS THEREFORE ORDERED that the Report and Recommendation of the United States Magistrate Judge (docket no. 24) is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Defendant Frost & Sullivan, Inc.'s Rule 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction and 12(b)(6) Motion to Dismiss for Failure to State a Claim (docket no. 7) is GRANTED in PART as to Plaintiff's breach of fiduciary duty and invasion of privacy claims. In all other respects, the motion is DENIED. Plaintiff has standing to pursue his claims for damages and injunctive relief, and his claims of negligence, negligence *per se*, breach of implied contract, and unjust enrichment survive Defendant's motion to dismiss. This case continues to be referred to the Magistrate Judge for further pretrial proceedings.

It is so ORDERED.

SIGNED this 4th day of September, 2024.



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FRED BIERY  
UNITED STATES DISTRICT JUDGE